(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH BILASPUR (C.G.)

W.P. 241 /2002

PETITIONER : I.V. Shrivastava aged 53 years,
son of Shri Khemlal Shrivastava,
Ex-Junior Superintendent,
M.P. State Warehousing Corporation,
Regional Office, RAIPUR.

Versus.

RESPONDENTS :1. M.P. State Warehousing Corporation,
through the Managing Director,
Office Complex Block-A, Gautam Nagar,
BHOPAL (M.P.).

2. Regional Manager,
M.P. State Warehousing Corporation,
Mahasamund Road, 97 Anandnagar,
RAIPUR (C.G.).

Attested
A.R.(J)
P.R. No. 2401
Filed by Shri R.S. Shrivastava
dated 28/1/02
vide sp/pr

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

(3)

Attested

A.R./CJ

P.R.

Free

Respondent No.-3

Chhattisgarh State
Ware Housing Corporation
Through The Managing Director
Anand Nagar Mahasamund Road
Raipur (C.G.) .

SOUTH COMMISSIONER
DURG (M.P.)

contd..2

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 241 of 2002

Petitioner : I. V. Shrivastava

Versus

Respondents : M. P. State Warehousing Corporation and one another.

Post for order on 20th July, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 241 of 2002

Petitioner : I. V. Shrivastava

Versus

Respondents : M. P. State Warehousing Corporation and one another.

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Ajay Shrivastava, Advocate for the Petitioner.

Shri Prashant Jayaswal, Senior Advocate with Shri Vinay Pandey, Advocate for the Respondent No.1.

Shri B. D. Guru, Advocate for the Respondent No.2.

ORDER

(20th July, 2006)

1. The present petition filed under Article 226/227 of the Constitution of India impugns the order of compulsory retirement dated 28.2.2001 (Annexure P/1) and the order dated 10.1.2002 (Annexure P/2) passed in appeal whereby the petitioner was retired compulsorily on attaining the age of 50 years and on completing 20 years of service.

2. The undisputed facts in brief are that the petitioner was working as Junior Superintendent with the Respondent No.1 Corporation and was posted at Regional Office, Raipur (C.G.). The petitioner, along with three other persons, was retired compulsorily in the public interest with payment of 3 months salary and allowances. The petitioner had already completed 50 years of age and had worked 20 years of service before the impugned order dated 28.2.2001 was passed.

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3. The petitioner preferred an appeal which was also dismissed by order dated 10.1.2002 (Annexure P/2).

4. The petitioner has filed this petition impugning the order dated 28.2.2001 (Annexure P/1) and the order dated 10.1.2002 (Annexure P/2) on the ground that the petitioner was retired compulsorily not in the public interest. The guidelines prescribed for consideration of case of an employee for retirement compulsorily from the services, were also not followed in accordance with the Circular No. C. 3-24/2000/3/1, dated 22.8.2000, issued by the General Administration Department, published in the General Book Circular, and one of the four employee, who was also retired compulsorily by order dated 28.2.2001, namely Shri Sudhir Maliviya, had been taken back in service which amounts to discriminatory treatment meted out to the petitioner.

5. Shri Ajay Shrivastava, learned counsel appearing for the petitioner submitted as stated above. He further submits that the petitioner was not communicated adverse remarks entered in his ACRs in the year 1989-90 and 1997-98, which were taken into consideration for the purpose of retiring the petitioner compulsorily. There was no recommendation of the Screening Committee against him for compulsory retirement.

6. Shri Prashant Jayaswal, learned Senior counsel with Shri Vinay Pandey, learned counsel appearing for the respondent No.1 and Shri B. D. Guru, learned counsel appearing for the respondent No.2 submitted that the petitioner was retired compulsorily on account of over all performance of the petitioner in his career and in public interest. It was further submitted that the Screening Committee had examined the cases of several employees and on the basis of the

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observations of the Screening Committee, the petitioner was retired from service compulsorily in public interest. With regard to the submissions of the petitioner that one of the employees namely Shri Sudhir Maliviya, who was retired from service compulsorily by the same order was taken back in service; learned counsel submitted that his case was considered afresh and it was found that he can be retained in service and on that count the petitioner cannot allege discrimination.

7. Having heard learned counsel for the parties and perusing the records it is clear that the respondents have followed the provisions as prescribed in the Circular No. C. 3-24/2000/3/1, dated 22.8.2000, issued by the General Administration Department, published in the General Book Circular, which provides the guidelines for consideration of an employee to retire the employee compulsorily. The said guidelines reads as under:-

"1. छानबीन कर अनिवार्य सेवानिवृत्ति के लिये निर्धारित मानदण्ड –

50 वर्ष की आयु और अथवा 20 वर्ष की सेवा पूर्ण करने वाले शासकीय सेवकों के लिये मूलभूत नियम 56 एवं मध्यप्रदेश सिविल सेवा (पेंशन) नियम, 1976 के नियम 42 के अधीन छानबीन करते समय अनिवार्य सेवानिवृत्त करने के लिये निम्नानुसार देखा जाये –

(1) ईमानदारी तथा सत्यनिष्ठा संदेहजनक होना । (इस हेतु संबंधित शासकीय सेवक का संपूर्ण अभिलेख देखा जाकर अनुशंसा की जाए ।)

(2) शारीरिक क्षमता में कमी ।

(3) ख्याति एवं कार्यक्षमता का मूल्यांकन संबंधित शासकीय सेवक के सेवाकाल के सम्पूर्ण अभिलेखों के आधार पर किया जाये । यह आवश्यक नहीं है कि प्रत्येक प्रतिकूल अभ्युक्ति अथवा ऐसी अभ्युक्ति जिसे प्रतिकूल अभ्युक्ति की संज्ञा दी जा सकती है, शासकीय सेवक को संसूचित की गई हो ।
(राज्य शासन, उ.प्र. एवं अन्य विरूद्ध बिहारी लाल, 1994 की सिविल अपील कमांक 6307 (ए.आई.आर. 1995 सुप्रीम कोर्ट 1161)

(4) सम्पूर्ण सेवाकाल के अभिलेखों का समग्र मूल्यांकन "अच्छा (ख)" श्रेणी से कम होना । इसके साथ यह भी देखा जावे कि शासकीय सेवक की कार्यक्षमता में

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गिरावट तो नहीं आ रही है । विशेषकर पिछले 5 वर्षो के कार्य का स्तर घट तो नहीं रहा है ।"

8. The screening Committee comprising of the Secretary, Manager (Personnel), Manager (Accounts) and Regional Manager, Bhopal was constituted to consider the cases of all the employees who had attained the age of 50 years or have worked for 20 years in service, in its meeting dated 6/7.11.2000, the Screening Committee in regard to the petitioner observed as under:-

"27. श्री आई. व्ही. श्रीवास्तव, कनि. अधीक्षक — इनने दि. 30.12.75 को निगम की सेवा में उपस्थिति दी, इन्हें किसी भी वर्ष "+क" श्रेणी प्राप्त नहीं हुई है । इन्हें निम्न वर्षो में "ग" श्रेणी प्राप्त हुई है :–

वर्ष— 1977, 78, 84, 88, 90, 94, 96, 97

वर्ष 89–90 को गोपनीय चरित्रावली में अंकित विपरीत टीपें पत्र क्र. 9155 दिनांक 11.1.91 तथा वर्ष 97–98 की गोपनीय चरित्रावली में अंकित विपरीत टीपें पत्र क्रं. 1706 दिनांक 25.5.99 द्वारा संसूचित की गई है ।"

9. On perusal of the observations of the Screening Committee, it is found that the Screening Committee has considered the ACRs of the preceding years. The adverse entry in the ACRs made in the year 1989-90 was communicated to the petitioner vide memo No. 9155 dated 11.1.1991 and the adverse entry in the year 1997-98 was communicated to the petitioner vide memo No. 1706 dated 25.5.1999. It is further found that the Screening Committee, which was especially constituted for considering the case of all the employees who had attained either 50 years of age or had worked for 20 years, did not make any recommendation in respect of the employees, who were under consideration by the Screening Committee. The observation of the Screening Committee is that there service records were not found satisfactory. This observation was made in as many as

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33 cases. On the side notings, I found that in the cases it is found fit, be retained, D.E. be initiated, retire, died, agreed etc. appears to have been made on the basis of decision taken by the respondent No.1/authorities.

10. In the case in hand, the guidelines required the gradation of an employee, not less than 'Kha' in the preceding years. In the case of the petitioner, it has been found that he was throughout graded as 'Ga'. The adverse remark made in the year 1989-90 was not challenged. The petitioner was warned earlier on 7.11.1984, 5.12.1984, 16.1.1985, 1.9.1985, 3.8.1987, 15.2.1990, 31.3.1990, 29.3.1990 and 15.5.1990. The respondents have enclosed several memos which were issued to the petitioner, warning him to improve his conduct as the petitioner was found most of the time absent from duties.

11. The Supreme Court in the case of **Union of India Vs. J. N. Sinha and another** (AIR 1971 SC 40) has observed as under:-

> "8.....There is no denying the fact that in all organizations and more so in Government organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56 (j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

12. The Supreme Court in the case of **C. D. Ailawadi Vs. Union of India and others** (AIR 1990 SC 1004) has observed as under:-

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"8. An aggrieved civil servant can challenge an order of compulsory retirement on any of the following grounds as settled by several decisions of this Court, (i) that the requisite opinion has not been formed; or (ii) that the decision is based on collateral grounds; or (iii) that it is an arbitrary decision....."

13. The Supreme Court in the case of **Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another** (AIR 1992 SC 1020) while providing for guiding principles has observed as under:-

"32. The following principles emerge from the above discussion:

(i) An order of compulsory retirement is not a punishment. It implies no stigma nor any suggestion of misbehaviour.

(ii) The order has to be passed by the Government on forming the opinion that it is in the public interest to retire a government servant compulsorily. The order is passed on the subjective satisfaction of the Government.

(iii) Principles of natural justice have no place in the context of an order of compulsory retirement. This does not mean that judicial scrutiny is excluded altogether. While the High Court or this Court would not examine the matter as an appellate Court, they may interfere if they are satisfied that the order is passed (a) malafide, or (b) that it is based on no evidence, or (c) that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material in short; if it is found to be a perverse order.

(iv) The Government (or the Review Committee, as the case may be) shall have to consider the entire record of service before taking a decision in the matter – of course attaching more importance to record of and performance during the later years. The record to be so considered would naturally include the entries in the confidential records; character rolls, both favourable and adverse. If

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a government servant is promoted to a higher post notwithstanding the adverse remarks, such remarks lose their sting, more so, if the promotion is based upon merit (selection) and not upon seniority.

(v) An order of compulsory retirement is not liable to be quashed by a Court merely on the showing that while passing it uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference....."

14. The Supreme Court in the case of **State of Gujarat and another Vs. Suryakant Chunilal Shah** { (1999) 1 SCC 529} has observed as under:-

"23. In order, therefore, to find out whether any government servant has outlived his utility and is to be compulsorily retired in public interest for maintaining an efficient administration, an objective view of overall performance of that government servant has to be taken before deciding, after he has attained the age of 50 years, either to retain him further in service or to dispense with his services in public interest, by giving him three months' notice or pay in lieu thereof.

24. The performance of a government servant is reflected in the annual character roll entries and, therefore, one of the methods of discerning the efficiency, honesty or integrity of a government servant is to look at his character roll entries for the whole tenure from the inception to the date on which decision for his compulsory retirement is taken. It is obvious that if the character roll is studded with adverse entries or the overall categorization of the employee is poor and there is material also to cast doubts upon his integrity, such a government servant cannot be said to be efficient. Efficiency is a bundle of sticks of personal assets, thickest of which is the stick of "integrity". If this is missing, the whole bundle would disperse. A government servant has, therefore, to keep his belt tight.

25. Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the

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adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance."

15. It is well settled principle of law that the order of compulsory retirement can be challenged only on the ground that the requisite opinion was not formed or the decision was based on the collateral grounds/no evidence, or the decision was arbitrary. It is further established principle of law that the order is based on the subjective satisfaction of the Government. This Court cannot sit as an appellate Court to interfere with the decision of the Government/employer, except in cases of no evidence or established malafide or the order is arbitrary. On perusal of the papers, as stated above, it is clear that in the present case, the order of the compulsory retirement does not suffer from any perversity or illegality as stated above. Thus, the impugned order is sustainable in law.

16. Accordingly, the writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur